FILED
DISTRICT CLERK OF
JEFFERSON CO TEXAS
9/9/2016 4:05:14 PM
JAMIE SMITH
DISTRICT CLERK
E-198972

CAUSE NO. _______________

LOUIS GEST,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
vs.	§	**JEFFERSON COUNTY, TEXAS**
	§	
CHEVRON U.S.A. INC.;	§	
LYONDELL CHEMICAL COMPANY;	§	
LYONDELL REFINING COMPANY LLC;	§	
SHELL OIL COMPANY;	§	
SHELL OIL PRODUCTS COMPANY LLC;	§	
MOTIVA ENTERPRISES LLC;	§	
SAUDI ARAMCO ENERGY VENTURES – U.S. LLC;	§	
SAUDI REFINING, INC.;	§	
AIR PRODUCTS AND CHEMICALS, INC.;	§	
CBS CORPORATION;	§	
AKZO NOBEL CHEMICALS LLC;	§	
HERCULES INCORPORATED;	§	
ASHLAND INC.;	§	
BP PRODUCTS NORTH AMERICA INC.;	§	
BP AMOCO CHEMICAL COMPANY;	§	
E.I. DU PONT DE NEMOURS AND COMPANY;	§	
ATLANTIC RICHFIELD COMPANY;	§	
EXXON MOBIL CORPORATION;	§	
AIR LIQUIDE USA LLC;	§	
AIR LIQUIDE AMERICA L.P.;	§	
VALERO ENERGY CORPORATION;	§	
VALERO REFINING-TEXAS, L.P.;	§	
VALERO REFINING AND MARKETING COMPANY;	§	
DIAMOND SHAMROCK REFINING COMPANY;	§	
THE GOODYEAR TIRE & RUBBER COMPANY; and	§	
MARATHON OIL CORPORATION,	§	
	§	
Defendants.	§	**___ JUDICIAL DISTRICT**

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith

EXHIBIT
1

PLAINTIFF'S ORIGINAL PETITION

NOW COMES Louis Gest, hereinafter referred to as Plaintiff, complaining of CHEVRON U.S.A., INC., LYONDELL CHEMICAL COMPANY, LYONDELL REFINING COMPANY LLC, SHELL OIL COMPANY, SHELL OIL PRODUCTS COMPANY LLC, MOTIVA ENTERPRISES LLC, SAUDI ARAMCO ENERGY VENTURES – U.S. LLC, SAUDI REFINING, INC., AIR PRODUCTS AND CHEMICALS, INC., CBS CORPORATION, AKZO NOBEL CHEMICALS LLC, HERCULES INCORPORATED, ASHLAND INC., BP PRODUCTS NORTH AMERICA INC., BP AMOCO CHEMICAL COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, ATLANTIC RICHFIELD COMPANY, EXXON MOBIL CORPORATION, AIR LIQUIDE USA LLC, AIR LIQUIDE AMERICA L.P., VALERO ENERGY CORPORATION, VALERO REFINING-TEXAS, L.P., VALERO REFINING AND MARKETING COMPANY, DIAMOND SHAMROCK REFINING COMPANY, THE GOODYEAR TIRE & RUBBER COMPANY, and MARATHON OIL CORPORATION, hereinafter collectively referred to as Defendants, and for causes of action would respectfully show this Court and Jury the following:

DISCOVERY CONTROL PLAN

1. Plaintiff requests that this case be governed by a discovery control plan as provided in Rule 190 and be conducted under Level 3 of this Rule.

PARTIES

2. Plaintiff, LOUIS GEST and resides in Santa Fe, Texas.

3. Defendant, CHEVRON U.S.A. INC. is a Pennsylvania Corporation doing business in the State of Texas and may be served with process through its registered agent for service: Prentice-Hall Corp System, Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Page 2 of 19

4. Defendant, LYONDELL CHEMICAL COMPANY is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

5. Defendant, LYONDELL REFINING COMPANY LLC is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

6. Defendant, SHELL OIL COMPANY is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

7. Defendant, SHELL OIL PRODUCTS COMPANY LLC is a Delaware Corporation doing business in the State of Texas with its headquarters in Dallas, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

8. Defendant, MOTIVA ENTERPRISES LLC is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

9. Defendant, SAUDI ARAMCO ENERGY VENTURES – U.S. LLC is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith Page 3 of 19

be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

10. Defendant, SAUDI REFINING, INC. is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

11. Defendant, AIR PRODUCTS AND CHEMICALS, INC. is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

12. Defendant, CBS CORPORATION is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

13. Defendant, AKZO NOBEL CHEMICALS LLC is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: Corporation Service Company d/b/a CSC-Lawyers Inc, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

14. Defendant, HERCULES INCORPORATED is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: CT Corp System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

15. Defendant, ASHLAND INC. is a Kentucky Corporation doing business in the State of Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith

16. Defendant, BP PRODUCTS NORTH AMERICA INC. is a Maryland Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

17. Defendant, BP AMOCO CHEMICAL COMPANY is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

18. Defendant, E.I. DU PONT DE NEMOURS AND COMPANY is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

19. Defendant, ATLANTIC RICHFIELD COMPANY is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

20. Defendant, EXXON MOBIL CORPORATION is a New Jersey Corporation doing business in the State of Texas with its headquarters in The Woodlands, Texas and may be served with process through its registered agent for service: Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

21. Defendant, AIR LIQUIDE USA LLC is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith Page 5 of 19

its registered agent for service: Capitol Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701.

22. Defendant, AIR LIQUIDE AMERICA L.P. is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: Capitol Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701.

23. Defendant, VALERO ENERGY CORPORATION is a Delaware Corporation doing business in the State of Texas with its headquarters in San Antonio, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

24. Defendant, VALERO REFINING-TEXAS, L.P. is a Texas Corporation doing business in the State of Texas with its headquarters in San Antonio, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

25. Defendant, VALERO REFINING AND MARKETING COMPANY is a Delaware Corporation doing business in the State of Texas with its headquarters in San Antonio, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

26. Defendant, DIAMOND SHAMROCK REFINING COMPANY, L.P. is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith Page 6 of 19

27. Defendant, THE GOODYEAR TIRE & RUBBER COMPANY is an Ohio Corporation doing business in the State of Texas and may be served with process through its registered agent for service: Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

28. Defendant, MARATHON OIL CORPORATION is a Delaware Corporation doing business in the State of Texas with its headquarters in Houston, Texas and may be served with process through its registered agent for service: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION & VENUE

29. Venue is proper in this cause of action in Jefferson County, Texas pursuant to §15.002(a)(1) of the Texas Civil practice and Remedies Code because a substantial part of the events or omissions occurred in this county. This Court has jurisdiction over the controversy because the damages exceed the minimal jurisdiction limits of this Court. Pleading further, all Defendants have maintained and do maintain sufficient minimum contact with the State of Texas to place themselves under and within the general and specific jurisdiction of the State of Texas such that the State of Texas may and does have "Long Arm" jurisdiction over these Defendants pursuant to the statutes and Constitution of the State of Texas and the United States of America. Further, Defendants conducted, and continue to conduct business activity in this county which gave rise to these claims. Venue is therefore proper against all Defendants because Plaintiff's claims against all Defendants arise out of the same series of transactions or occurrences.

30. There is no basis for removal of this case to Federal Court. Defendants Lyondell Chemical Company, Lyondell Refining Company LLC, Shell Oil Company, Shell Oil Products Company LLC, Motiva Enterprises LLC, Saudi Aramco Energy Ventures – U.S. LLC, Saudi

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith Page 7 of 19

Refining, Inc., BP Products North America, Inc., BP Amoco Chemical Company, Atlantic Richfield Company, Exxon Mobil Corporation, Air Liquide USA LLC, Air Liquide America L.P., Valero Energy Corporation, Valero Refining-Texas, L.P., Valero Refining and Marketing Company, Diamond Shamrock Refining Company, L.P. and Marathon Oil Corporation are citizens of the State of Texas pursuant to 28 U.S.C. §1441(b). There is no federal question at issue pursuant to 28 U.S. C. §1441(b). There is no diversity of citizenship pursuant to 28 U.S.C. §1441 and 28 U.S.C. §1332, because one or more of the Defendants is a citizen of the State of Texas. *See* 28 U.S.C. §1441(b) and 28 U.S.C. §1332(c).

FACTS

31. Plaintiff, Louis Gest was employed as a chemical plant and refinery worker and pipefitter from 1970 through 2005. Throughout this time, Mr. Gest worked his craft at facilities in Texas owned and/or operated by Defendants Chevron U.S.A. Inc., Lyondell Chemical Company, Lyondell Refining Company LLC, Shell Oil Company, Shell Oil Products Company LLC, Motiva Enterprises LLC, Saudi Aramco Energy Ventures – U.S. LLC, Saudi Refining, Inc., Air Products and Chemicals, Inc., CBS Corporation, Akzo Nobel Chemicals LLC, Hercules Incorporated, Ashland Inc., BP Products North America, Inc., BP Amoco Chemical Company, E.I. du Pont de Nemours and Company, Atlantic Richfield Company, Exxon Mobil Corporation, Air Liquide USA LLC, Air Liquide America L.P., Valero Energy Corporation, Valero Refining-Texas, L.P., Valero Refining and Marketing Company, Diamond Shamrock Refining Company, L.P., The Goodyear Tire & Rubber Company and Marathon Oil Corporation.

32. Specifically, Louis Gest worked and was exposed to benzene and benzene-containing mixtures at the following locations: Port Arthur Refinery in Port Arthur, Texas; Beaumont Refinery, Chemical and Plant in Beaumont, Texas; Houston Refining in Houston,

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith
Page 8 of 19

Texas; Shell Deer Park Refinery in Deer Park, Texas; Air Products & Chemicals Plant in Pasadena, Texas; Charter International Oil Refinery in Pasadena, Texas; Stauffer Chemicals Plant in Houston, Texas; Texas City Refinery in Texas City, Texas; Du Pont Chemical Plant in La Porte, Texas; ExxonMobil Baytown Refinery in Baytown, Texas; Air Liquide Plant in Pasadena, Texas; Diamond Shamrock Refinery in Houston, Texas; Valero Houston Refinery in Houston, Texas; and Goodyear Chemical Plant in Houston, Texas. In the course of his work, Louis Gest was exposed, through inhalation, ingestion and dermal contact, to harmful levels of benzene and benzene-containing mixtures at Defendants' facilities.

33. Defendants, Chevron U.S.A. Inc., Shell Oil Company, Shell Oil Products Company LLC, Motive Enterprises LLC, Saudi Aramco Energy Ventures-U.S. LLC and Saudi Refining, Inc. owned, operated, and/or through a series of mergers and acquisitions are ultimately responsible for liabilities arising from the Port Arthur Refinery. Defendant, Exxon Mobil Corporation owned and/or operated the Beaumont Refinery, Chemical and Plant and ExxonMobil Baytown Refinery. Defendants Lyondell Chemical Company, Lyondell Refining Company LLC, and Atlantic Richfield Company owned, operated, and/or through a series of mergers and acquisitions are ultimately responsible for liabilities arising from Houston Refining. Defendants Shell Oil Company and Shell Oil Products Company owned and/or operated the Shell Deer Park Refinery. Defendant Air Products and Chemicals, Inc. owned and/or operated Air Products & Chemicals. Defendant CBS Corporation acquired Charter International Oil Company which owned and/or operated the Charter International Oil Refinery. Defendant Akzo Nobel Chemicals LLC acquired Imperial Chemical Industries which previously acquired Stauffer Chemical Company and owned, operated, and/or through a series of mergers and acquisitions are ultimately responsible for liabilities arising from the Stauffer Chemicals Plant. Defendants, BP Products

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith

North America Inc. and BP Amoco Chemical Company owned and/or operated the Texas City Refinery. Defendant, E.I. Du Pont de Nemours and Company owned and/or operated the Du Pont chemical facility. Defendants Air Liquide USA LLC and Air Liquide America L.P. owned and/or operated the Air Liquide Facility. Defendants, Valero Energy Corporation, Valero Refining-Texas, L.P., Valero Refining and Marketing Company owned and/or operated the Valero Houston Refinery, Texas City Refinery, Port Arthur Refinery, and owned, operated and/or through a series of mergers and acquisitions with Defendant Diamond Shamrock Refining Company, L.P. are ultimately responsible for liabilities arising from the Diamond Shamrock Plant. Defendant, The Goodyear Tire & Rubber Company owned and/or operated the Goodyear Chemical Plant. Defendant Marathon Oil Corporation owned and/or operated the Texas City Refinery.

34. While performing his duties, Mr. Gest was exposed to benzene and benzene-containing mixtures utilized, supplied and/or manufactured by Defendants. Each Defendant herein is liable in their capacities as a premises owner, distributor, operator, supplier and/or transporter of benzene and benzene-containing mixtures, and as such retained the right to control, exercise control and duty to warn Louis Gest.

35. Each Defendant is liable in their capacity for manufacturing, selling, marketing, distributing, designing, and/or placing in the stream of commerce benzene and benzene-containing mixtures that were defective, hazardous and/or carcinogenic. Each Defendant is further liable in capacities as general contractor, subcontractor, premise owners, premise operator, supplier, manufacturer, as an entity that marketed benzene and benzene-containing mixtures, as an entity that retained the right to control or exercised control over Louis Gest, and/or creator of dangerous conditions.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith Page 10 of 19

36. Each Defendant was aware, or should have been aware, of the dangers associated with exposures to benzene and benzene-containing mixtures at the premises where Louis Gest worked. Nevertheless, Defendants failed to warn employees, invitees, and contractors of the dangers associated with occupational exposure to benzene and benzene-containing mixtures and required workers, such as Louis Gest to work with or in proximity to hazardous substances without the necessary precautions to avoid dangerous exposures to benzene and benzene-containing mixtures.

37. As a direct and proximate result of his exposure to benzene and benzene-containing mixtures Plaintiff, Louis Gest developed myelodysplastic syndrome (MDS) including multiple related adverse blood and bone marrow effects, cellular abnormalities, anemia, genotoxic effects and resultant DNA and chromosomal damage as diagnosed on or about September 10, 2014.

COUNT ONE - NEGLIGENCE

38. All of the allegations contained in the previous paragraphs are re-alleged herein.

39. Plaintiff will show that he was exposed to a toxic, harmful and deadly situation by all Defendants in this case. Plaintiff alleges, as more specifically set out below, that he contracted an illness, and such illness was proximately caused by Defendants' negligent acts, and by his exposure to benzene and benzene-containing mixtures designed, produced, manufactured, marketed, placed into the stream of commerce, or sold or used by Defendants.

40. The negligence of Defendants or, where applicable, the employee or the agent of Defendants, was a proximate cause of Louis Gest's disease and damages alleged herein.

41. Defendants knew, or with the exercise of ordinary and reasonable care ought to have known, that the benzene and benzene-containing mixtures they manufactured, used, sold, designed, supplied, distributed, relabeled, resold or procured, were poisonous, toxic and extremely

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith
Page 11 of 19

harmful to human health. Defendants owed a duty to Louis Gest and breached their duty and were therefore negligent in the following respects, among others, and such negligence was the proximate cause of the pain, suffering and illness of Louis Gest and of the damages sustained by Louis Gest:

a. Defendants knew that the benzene and benzene-containing mixtures they utilized, distributed, designed, supplied, marketed, manufactured and/or put into the stream of commerce were deleterious, poisonous, carcinogenic, and highly harmful to the body and health of Louis Gest; notwithstanding which, Defendant failed to take any precautions or to warn Louis Gest of the dangers and harm to which he was exposed while handling these products;

b. Defendants knew that the benzene and benzene-containing mixtures used by or in proximity to Louis Gest were carcinogenic, deleterious, and highly harmful to his body and health and that Louis Gest would not have known of such dangerous properties; notwithstanding which, Defendants failed to provide Louis Gest with sufficient knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances to protect him from being damaged by exposure to such products;

c. Defendants knew that the benzene and benzene-containing mixtures used by or in proximity to Louis Gest contained carcinogenic and highly harmful substances to the human body and health; notwithstanding which, Defendants failed to take any precautions or to exercise care by placing any warnings or cautions in the areas where the products were located or on the containers of such products or the products themselves to warn the handlers thereof of the dangers to health in coming into contact with these products;

d. Defendants knew that the benzene and benzene-containing mixtures used by or in proximity to Louis Gest contained deleterious and carcinogenic substances; notwithstanding which, Defendants failed to take reasonable care to warn Louis Gest of said danger and/or to instruct Louis Gest in proper handling of said products or to take proper precautions or exercise care to protect Louis Gest from harm, and failed to timely adopt and enforce any safety plan and method of handling these dangerous products;

e. Defendants knew or should have known that the benzene and benzene-containing mixtures they introduced into the stream of commerce were toxic and/or carcinogenic and failed to adequately warn;

f. Defendants created dangerous conditions on their premises;

g. Defendants failed to keep their premises in a reasonably safe condition;

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith Page 12 of 19

h. Defendants failed to give adequate warnings of the dangerous conditions on their premises;

i. Defendants failed to protect invitees, such as Louis Gest, from the hazards associated with exposure to these toxic and carcinogenic chemicals and substances;

j. Defendants failed to medically monitor or perform industrial hygiene monitoring for Louis Gest;

k. Defendants supplied benzene and benzene-containing mixtures with marketing, design, and/or manufacturing defects;

l. Defendants committed acts or omissions while having a right to control;

m. Defendants failed to properly exercise the right to control;

n. Defendants failed to provide a safe place to work;

o. Defendants failed to provide adequate safety equipment;

p. Defendants failed to monitor chemical and toxic substance levels in the workplace;

q. Defendants negligently failed to adopt and enforce a reasonable and safe industrial hygiene plan for benzene and benzene-containing mixtures;

r. Defendants negligently failed to provide Louis Gest with visible, understandable warnings that were adequate to convey the severity of the risks;

s. Defendants negligently failed to take reasonable care to warn Louis Gest of the latency period concerning diseases caused by exposure to benzene and benzene-containing mixtures;

t. Defendants negligently failed to take reasonable care to warn Louis Gest of bystander exposure;

u. Defendants negligently failed to warn Louis Gest about the risk of developing cancer;

v. Defendants negligently failed to warn Louis Gest about the risk of developing cancer and diseases of the blood;

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith

w. Defendants negligently failed to warn Louis Gest that there is no known safe level of exposure to benzene and benzene-containing mixtures;

x. Defendants negligently failed to fund medical and scientific studies to determine if there ever was a safe level of exposure to benzene and benzene-containing mixtures;

y. Defendants negligently failed to provide benzene and benzene-containing mixtures safe for human beings;

z. Defendants negligently failed to test their benzene and benzene-containing mixtures;

aa. Defendants negligently failed to research the world literature concerning health hazards relating to benzene and benzene-containing mixtures;

bb. Defendants negligently failed to warn and counsel individuals exposed to benzene and benzene-containing mixtures; and

cc. Defendants negligently committed wrongful acts that gave rise to Louis Gest's injuries and resulting damages.

42. Such other acts or omissions of negligence are also acts of gross negligence, malice and/or strict products liability, and were a proximate and producing cause of Louis Gest's injuries damages, including damages for reasonable and necessary past and future medical expenses, past and future pain and suffering and mental anguish, physical impairment, and disfigurement.

COUNT TWO - STRICT PRODUCT LIABILITY

43. All of the allegations contained in the previous paragraphs are re-alleged herein.

44. The benzene and benzene-containing mixtures to which Louis Gest was exposed were designed, produced, manufactured, marketed, sold and/or otherwise put into the stream of commerce by Defendants, and were used for their intended purpose.

45. Plaintiff will further show that the benzene and benzene-containing mixtures in question were defective and not reasonably fit for the purposes and uses for which they were intended at the time they left the hands of the Defendants in that the products were unreasonably

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith Page 14 of 19

dangerous for their intended use and Defendants failed to give the users adequate warnings or instructions concerning the benzene and benzene-containing mixtures' dangers that were known or should have been known to the Defendants by the application of reasonably developed skill and foresight. This failure to warn on the part of the Defendants rendered such products unreasonably dangerous at the time they left the hands of the Defendants and were the proximate cause of the illness and resulting injuries, disabilities, and damages sustained by Plaintiff, Louis Gest.

COUNT THREE - BREACH OF WARRANTY

46. All of the allegations contained in the previous paragraphs are re-alleged herein.

47. Defendants were merchants with respect to their benzene and benzene-containing mixtures. In connection with the manufacture, design, assembly, sales, supply, delivery, handling, marketing, advertising and instructing in the use benzene and benzene-containing mixtures, Defendants warranted, either expressly or impliedly, that their products were merchantable, when in fact they were not. These products were unfit for the ordinary purposes or uses for which they were intended, including their use and handling by human beings. Further, Defendants breached express and implied warranties under the Texas Uniform Commercial Code.

COUNT FOUR - MISREPRESENTATION

48. All of the allegations contained in the previous paragraphs are re-alleged herein.

49. In addition, Defendants misrepresented material facts concerning the character or quality of their benzene and benzene-containing mixtures upon which Louis Gest relied, and therefore are liable to Plaintiff.

COUNT FIVE - GROSS NEGLIGENCE

50. All of the allegations contained in the previous paragraphs are re-alleged herein.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith Page 15 of 19

51. The actions and inactions of Defendants, and or alternatively the employees or agents of Defendants, and their predecessors-in-interest, whether taken separately, or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in the illness and damages to Louis Gest. More specifically, Defendants, or alternatively the employees or agents of Defendants, and their predecessors-in-interest, consciously and/or deliberately engaged in fraud, wantonness and/or malice with regard to Louis Gest. Defendants had actual awareness of the extreme degree of risk associated with exposure to the benzene and benzene-containing mixtures they utilized, manufactured, processed, and/or distributed, and nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Louis Gest by failing to act to minimize or eliminate these risks. Therefore, Defendants are guilty of gross negligence for which they should be held liable in punitive and exemplary damages to Plaintiff.

COUNT SIX – MALICE, WILLFUL ACT
AND/OR OMISSION OR GROSS NEGLECT

52. All of the allegations contained in the previous paragraphs are re-alleged herein.

53. Plaintiff will show that his injuries and resulting damages were directly and proximately caused by the fraud, malice, willful acts and/or omissions, or gross neglect of Defendants herein, their agents, servants, employees, managers, superintendents, supervisors and officers. Plaintiff will further show that if each of the acts of negligence, alleged by Plaintiff did not independently constitute fraud, malice, willful acts and/or omissions, or gross neglect then certainly all of the said acts or omissions combined and in the aggregate constituted fraud, malice, willful acts and/or omissions, or gross neglect and were the proximate causes of Plaintiff's injuries and damages. Viewed objectively from the standpoint of Defendants, the acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith

harm to others and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others. Thus, Plaintiff sues for exemplary damages in an amount in excess of the jurisdictional limits of this Court.

RELIEF SOUGHT

54. Plaintiff, Louis Gest was diagnosed with myelodysplastic syndrome on September 10, 2014, and continues to undergo extensive treatment for his disease. The conduct of Defendants, as alleged hereinabove, was a direct, proximate and producing cause of the injuries and illness to Louis Gest, and the following general and special damages that Plaintiff sustained:

a. Reasonable and necessary medical expenses incurred by Louis Gest in the past;

b. Reasonable and necessary medical expenses to be incurred by Louis Gest in the future;

c. The conscious physical pain and suffering and mental anguish sustained by Louis Gest in the past and future;

d. The physical impairment suffered by Louis Gest;

e. The disfigurement suffered by Louis Gest;

f. Loss of earnings suffered by Louis Gest, past and future;

g. The mental anguish suffered by Louis Gest due to his injuries and illness; and

h. Plaintiff seeks punitive and exemplary damages.

Pursuant to Tex. R. Civ. P. 47, Plaintiff seeks monetary relief of over $1,000,000.00. Plaintiff further demands judgment for all other relief justly entitled.

JURY DEMAND

55. Plaintiff hereby requests a trial by jury. The jury fee has been paid contemporaneously with the filing of the Original Petition.

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith Page 17 of 19

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
Jamie Smith

REQUEST FOR DISCLOSURE

56. Pursuant to Rule 194.3(a) of the Texas Rules of Civil Procedure, Plaintiff requests that each Defendant disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2(a)-(k) of the Texas Rules of Civil Procedure.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands that Defendants answer herein as the law directs, and that upon final hearing, this Court enter Judgment against Defendants, both jointly and separately, for actual, special and exemplary or punitive damages together with interest thereon at the legal rate, costs of court, and for other such additional and further relief, special and general, at law and in equity, which the Plaintiff shows just and proper in accordance with the law.

Respectfully submitted,

/s/ Keith E. Patton
By:______________________________

SHRADER & ASSOCIATES, L.L.P.
Keith E. Patton
Texas Bar No. 24032821
David J. Baluk
Texas Bar No. 24078186
3900 Essex Lane, Suite 390
Houston, Texas 77027
Telephone: (713) 782-0000
Facsimile: (713) 571-9605
Email: keith@shraderlaw.com
Email: david@shraderlaw.com

ATTORNEYS FOR PLAINTIFF

DISTRICT CLERK OF JEFFERSON COUNTY, TEXAS
I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office
October 14, 2016
JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY ,TEXAS
Jamie Smith
Page 19 of 19

I CERTIFY THIS IS A TRUE COPY
Witness my Hand and Seal of Office

JAMIE SMITH, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS

Certified Document Number: 1676058 Total Pages: 19

In accordance with Texas Government Code 51.301 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail districtclerk@co.jefferson.tx.us